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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 SEAN MAURICE ROBINSON,) Case No. CV 18-10636-MWF (PJW)
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12) Petitioner,)
13) DISMISSING PETITION WITH
14) v.) PREJUDICE
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17) WARDEN FELIPE MARTINEZ,)
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19) Respondent.)
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16 Petitioner is a federal inmate currently incarcerated at the
17 United States Penitentiary in Lompoc, California. On December 26,
18 2018, he filed a "Petition for Writ of Habeas Corpus by a Person in
19 Federal Custody" pursuant to 28 U.S.C. § 2241 ("Petition"),
20 challenging his November 2016 sentence from the District Court for the
21 Western District of North Carolina. For the reasons explained below,
22 the Petition is dismissed.

23 In November 2016, Petitioner pleaded guilty to conspiracy to
24 possess with intent to distribute marijuana. (Petition at 1.) As
25 part of his plea agreement, he stipulated that the information
26 contained in the charging document was accurate, including that the
27 "amount of a mixture and substance containing a detectable amount of
28 marijuana that was known or reasonably foreseeable by [Petitioner] was

1 at least [100] kilograms but less than [400] kilograms[.]” *United*
2 *States v. Robinson*, 15-CR-0264-RJC (W.D.N.C.), March 29, 2018 Order
3 Denying 2255 Motion to Vacate (Doc. No. 29) at 2.¹ In return, the
4 government dismissed charges of possession with intent to distribute,
5 possession of a firearm in furtherance of drug trafficking, and
6 possession of a firearm by a felon. (*Id.* at 1.) As a result, because
7 Petitioner was a career offender, the advisory sentencing guideline
8 range he faced was reduced from 262-327 months to 188-235 months.
9 (*Id.* at 3-4.) The court sentenced him to 204 months in prison and
10 four years of supervised release. (*Id.* at 4.)

11 In March 2017, Petitioner, proceeding pro se, filed a 28 U.S.C.
12 § 2255 motion in the North Carolina district court, claiming, among
13 other things, that his sentence exceeded the statutory maximum because
14 he was indicted for “the attempted possession of 15 pounds of
15 Marijuana,” which should have resulted in a lower offense level, and
16 that his prior conviction for infliction of corporal injury on a
17 spouse or cohabitant did not qualify as a “crime of violence” for
18 purposes of the career offender designation, in light of *Johnson v.*
19 *United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015). (Doc. No. 28 at
20 4, 6-8.) The court denied the motion, concluding that Petitioner had
21 waived his right to raise most of his claims in the plea agreement and
22 that none of the claims had merit. (Doc. No. 29 at 7, 10-11.)
23 Petitioner then filed an appeal in the Fourth Circuit Court of
24 Appeals, which was denied. *United States v. Robinson*, 724 Fed. App’x
25 255 (4th Cir. 2018). While that appeal was pending, he filed a motion
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27 ¹ All document numbers herein refer to filings in case number
28 15-CR-0264-RJC in the North Carolina district court.

1 for resentencing in the district court in light of *Sessions v. Dimaya*,
2 138 S. Ct. 1204 (2018), arguing, once again, that his prior conviction
3 for infliction of corporal injury on a spouse or cohabitant did not
4 render him a career offender. (Doc. No. 32.) The court denied the
5 motion, finding that *Dimaya*, like *Johnson* before it, "ha[d] no bearing
6 on" Petitioner's sentence. (Doc. No. 33; see Doc. No. 29 at 11.)

7 In June 2018, Petitioner filed a motion for relief pursuant to
8 Rule 60(b) of the Federal Rules of Civil Procedure in the district
9 court in North Carolina in which he argued, among other things, that
10 his sentence exceeded the statutory maximum. (Doc. Nos. 16, 17.) The
11 court denied the motion on the ground that it was an unauthorized
12 successive § 2255 motion and also denied a certificate of
13 appealability. (Doc. No. 19.) In September 2018, Petitioner filed a
14 motion for reconsideration, which the court also denied. (Doc. Nos.
15 20-21.)

16 On December 26, 2018, Petitioner filed the instant § 2241
17 Petition in this court, arguing, as he has done several times in the
18 North Carolina district court, that his sentence is unconstitutional
19 because it exceeds the statutory maximum and that he has been
20 improperly deemed a career offender. (Petition at 2-3.) He further
21 contends that his remedy under § 2255 is inadequate. (Petition at 4.)

22 The proper vehicle for challenging a federal conviction or
23 sentence is a § 2255 motion in the district of conviction. In this
24 regard, § 2255 provides:

25 An application for a writ of habeas corpus in behalf of a
26 prisoner who is authorized to apply for relief by motion
27 pursuant to this section, shall not be entertained if it
28 appears that the applicant has failed to apply for relief,

1 by motion, to the court which sentenced him, or that such
2 court has denied him relief, unless it also appears that the
3 remedy by motion is inadequate or ineffective to test the
4 legality of his detention.

5 See, e.g., *Harrison v. Ollison*, 519 F.3d 952, 956 (9th Cir. 2008)
6 (motions to contest legality of sentence must be filed under § 2255 in
7 the sentencing court). What this language means is that, generally
8 speaking, a prisoner cannot proceed under § 2241 if he was
9 unsuccessful in obtaining relief under § 2255. See *Stephens v.*
10 *Herrera*, 464 F.3d 895, 897 (9th Cir. 2006) (noting "restrictions on
11 the availability of a § 2255 motion cannot be avoided through a
12 petition under 28 U.S.C. § 2241.") Though there is an exception to
13 the general rule, known as the "escape hatch" or "savings clause,"
14 which allows a prisoner to raise constitutional or statutory claims
15 under § 2241 that he was unable to raise under § 2255, Petitioner
16 cannot show that his case falls within that exception. To qualify, a
17 prisoner must establish: (1) that he is actually innocent; and (2)
18 show that he has not had "an unobstructed procedural shot" at
19 presenting his claim. *Harrison*, 519 F.3d at 959; see also *Ivy v.*
20 *Pontesso*, 328 F.3d 1057, 1060-61 (9th Cir. 2003).

21 First, Petitioner has not alleged, let alone demonstrated, that
22 he is actually innocent. It is not enough to bring a legal challenge
23 against an allegedly unlawful sentence; rather, a petitioner must
24 demonstrate that, "in light of all the evidence, it is more likely
25 than not that no reasonable juror would have convicted him." *Marrero*
26 *v. Ives*, 682 F.3d 1190, 1192-93, 1195 (9th Cir. 2012) ("[T]he purely
27 legal argument that a petitioner was wrongly classified as a career
28 offender under the Sentencing Guidelines is not cognizable as a claim

1 of actual innocence under the escape hatch."); see also *Bousley v.*
2 *United States*, 523 U.S. 614, 623 (1998) ("'[A]ctual innocence' means
3 factual innocence, not mere legal insufficiency.").

4 Second, he cannot show that his ability to present his sentencing
5 claims has been obstructed. In fact, Petitioner has raised these same
6 claims numerous times on direct appeal and in collateral challenges to
7 his sentence in the North Carolina district court and the Fourth
8 Circuit Court of Appeals and the claims have been rejected. (Doc.
9 Nos. 17, 19, 20, 21, 28, 29, 32, 33, 34.) As such, he may not now
10 proceed on a § 2241 petition in this court.

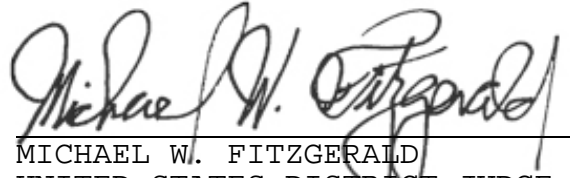
11 The Court has considered whether the case should be transferred
12 to the Western District of North Carolina or the Fourth Circuit Court
13 of Appeals instead of being dismissed. In light of those courts'
14 repeated denials of Petitioner's claims, however, the Court concludes
15 that the case is not sufficiently meritorious to warrant transfer. 28
16 U.S.C. § 1631; see also *United States v. Prevatte*, 300 F.3d 792, 799
17 (7th Cir. 2002). For these reasons, the Petition is dismissed for
18 lack of jurisdiction.

19 The Court also finds that Petitioner has not made a
20 substantial showing of the denial of a constitutional right or that
21 the court erred in its procedural ruling and, therefore, a certificate
22 of appealability will not issue in this action. See 28 U.S.C.
23 § 2253(c)(1)(B); Fed. R. App. P. 22(b); *Miller-El v. Cockrell*, 537
24 U.S. 322, 336 (2003); see also *Alaimalo v. United States*, 645 F.3d
25 1042, 1047 (9th Cir. 2011) ("Where a petition purportedly brought
26 under § 2241 is merely a 'disguised' § 2255 motion, the petitioner
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1 cannot appeal the denial of that petition absent a [certificate of
2 appealability.]").

3 IT IS SO ORDERED.

4 DATED: July 31, 2019

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7 MICHAEL W. FITZGERALD
8 UNITED STATES DISTRICT JUDGE
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23 Presented by:

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26 PATRICK J. WALSH
27 UNITED STATES MAGISTRATE JUDGE
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